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January 10, 2000

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
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Washington, DC 20554

EX PARTE SUBMISSION

**Re: In the Matter of Communications Assistance for Law  
Enforcement Act, CC Docket No. 97-213**

Dear Ms. Salas:

AT&T Corp. respectfully requests that the enclosed letter to Mr. Dale Hatfield, Chief of the Office of Engineering and Technology be included in the record of this proceeding. Pursuant to 47 C.F.R. § 1.1206, an original and one copy of this letter are submitted. Please do not hesitate to contact me if you have any questions.

Sincerely,

*Stephen C. Garavito /ha*

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Martha Lewis Marcus

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enclosure

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January 10, 2000

Mr. Dale Hatfield  
Chief, Office of Engineering and Technology  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**EX PARTE SUBMISSION**

**Re: In the Matter of Communications Assistance for Law  
Enforcement Act, CC Docket No. 97-213**

Dear Mr. Hatfield:

It has come to AT&T's attention that the Federal Bureau of Investigation -- as part of the industry standards process being conducted on remand by the Telecommunications Industry Association -- has asserted a position that the Commission's *Third Report and Order*<sup>1</sup> extends CALEA coverage to bridge-based conference calls.<sup>2</sup>

AT&T has never read the *Third Report and Order* as reaching any such conclusion. To the contrary, the Commission's Order -- and the extensive proceedings upon which it is based -- were limited solely to switch-based teleconferencing capabilities. Accordingly, AT&T respectfully urges the Commission to reject any request that it might receive from law enforcement to expand CALEA coverage to bridge-based conference calls. Further, if the Commission has any inclination to adopt law enforcement's position, the Commission should obtain public comment from providers and manufacturers of teleconference bridge equipment before making any judgment. Without any previous public record or indication that the

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<sup>1</sup> In the Matter of Communications Assistance for Law Enforcement Act, *Third Report and Order*, CC Docket No. 97-213, FCC 99-230 (rel. August 31, 1999) ("Third R&O").

<sup>2</sup> See FBI Contributions -- "Recommendations for Reporting Conference Callings and Miscellaneous Changes," TR 45.2.LAES/99.11.15.09 and "Definition of 'Meet-Me' Conference Service -- Revised," TR 45.2.LAES/99.12.14 -- attached to *Ex Parte Submission of TIA*, CC Docket No. 97-213 (filed December 23, 1999).



Commission intended its proceedings to apply to bridge-based conference calls, a Commission determination to impose such obligations at this point would deprive the companies who provide and build conference bridge equipment of a fair opportunity for notice and comment.

As the Commission is aware, there are two basic methods for provisioning a conference call. The first method employs conference features, such as three-way calling, that are established in the serving switch of the subscriber. These relatively new, switch-based features are the kind of conferencing services that are covered by J-STD-025<sup>3</sup> and were discussed at length in the proceedings that led to the Commission's *Third Report and Order*. As a service provided by the carrier to its subscribers, these switch-enabled conferencing capabilities are covered by CALEA, and AT&T is working with its manufacturers to ensure that its cellular and local service entities are compliant with the Commission's decisions concerning these capabilities.

"Meet Me" conference bridges, on the other hand, are set up and operate completely independent of a subscriber. The provisioning of the conference is not part of a continuing telecommunications service provided to an individual subscriber. On the contrary, the bridge is an "on demand" product that can be ordered and accessed by anyone at any time. Because these bridge-based products do not operate out of the "equipment, facilities or services of a subscriber," as required by section 103(a),<sup>4</sup> they cannot be regulated under CALEA. The FBI's interpretation of the *Third Report and Order* ignores this important legal restriction and would sweep both types of teleconferencing schemes under the statute. This reading is inaccurate both textually and legally.

The Commission's *Third Report and Order* clearly (and properly) applies only to the first type of teleconferencing technology. The Commission recognized the distinction between switch-based and bridge-based conferences, concluding that law enforcement is entitled to obtain call content when "the *subject's facilities* initiate the call and are being used to participate in the call."<sup>5</sup> Thus, in Appendix A, the Commission defines the "subject initiated conference call" capability as permitting law enforcement to monitor the content of a conference call "when the facilities under surveillance maintain a circuit connection to the call." The "facility under surveillance" is the subject's switch-based conferencing capability.<sup>6</sup> On the other hand, the

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<sup>3</sup> TIA & Alliance for Telecommunications Industry Solution, J-STD-025, *Interim Solution: Lawfully Authorized Electronic Surveillance* (December 1997).

<sup>4</sup> 47 U.S.C. § 1002(a).

<sup>5</sup> Third R&O, at ¶ 66 (emphasis added).

<sup>6</sup> Similarly, in its *Further Notice of Proposed Rulemaking*, the Commission focused on switch-based conference calls that are tied to a specific subscriber: "For those configurations, however, in which, when the subscriber drops off the call, the call is either disconnected or rerouted, and the '*equipment, facilities, or services of a subscriber*'" (Continued ...)

Commission noted that “a meet-me conference bridge will ordinarily constitute a separate ‘facility’ from the local switch associated with the subscriber’s own directory number.”<sup>7</sup>

The Commission’s emphasis on switch-based conferencing capabilities is completely consistent with J-STD-025, which similarly applies only to switch-based conferencing features. As TIA recently noted, Subcommittee TR 45.2 (which developed J-STD-025 and is currently working on the revisions mandated by the Commission) principally consists of carriers that only offer switch-based teleconferencing services and their switch manufacturers. In drafting J-STD-025, this working group properly focused on the technology it understands best: switch-based conferencing features as invoked by the subscriber. As a result, Section 4.5.1 of J-STD-025 provides that “[t]he Circuit IAP (CIAP) shall access a multi-party circuit-mode communication (e.g., Three-way Calling, Conference Calling, or Meet-Me Conferences) as it would be presented to the intercept subject.” In other words, the TIA standard deals with intercepts of conference calls from the perspective of the subject’s serving switch. Thus, for switch-based conferences, the standard requires carriers to provide call content and call-identifying information on the entire conference. However, in the case of a bridge-based product, the serving switch only has access to the subscriber’s connection to the conference and can only provide the call content and identification pertaining to that “leg.” Since the conference itself operates in a remote bridge unrelated to the subscriber’s serving switch, J-STD-025 imposed no CALEA obligation to provide information from the bridge itself.<sup>8</sup>

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are no longer used to maintain the conference call, we tentatively conclude that CALEA does not require the carrier to provide the LEA access to the call content of the remaining parties.” In the Matter of Communications Assistance in Law Enforcement Act, *Further Notice of Proposed Rulemaking*, CC Docket No. 97-213, FCC 98-282, ¶ 78 (rel. November 5, 1998) (emphasis added).

<sup>7</sup> Third R&O, ¶ 67 & n. 130.

<sup>8</sup> Consistent with these technical realities and the Commission’s *Third Report and Order*, Subcommittee TR 45.2 recently reconfirmed this basic treatment of conference calls – distinguishing between switch-based conferences (to which the serving switch shall provide access) and bridge-based conferences (to which the serving switch can only provide access to the subject’s leg): “In J-STD-025A, the Circuit IAP (CIAP) shall access the call content of a subject-initiated, multi-party, circuit-mode communication (i.e., Three-Way Calling, Multi-Way Calling) when the intercept subject’s equipment, facilities and services initiate the call and are being used to participate in the calls. The CIAP shall access the call content of On-Demand Multi-Party (i.e., Meet Me Conference) circuit-mode communications as it would be presented to the intercept subject (i.e., two-way communication) since no network signal would be generated to indicate intercept subject access and control of the conference feature. Otherwise, Meet Me conference calls are outside the scope of this standard.”

This is not to suggest that there are no wiretapping obligations when it comes to bridge-based conference calls. Of course, AT&T acknowledges its responsibility pursuant to a lawfully executed Title III order to provide law enforcement, to the best of its ability, with access to monitor the content of any such calls. In the legislative history to CALEA, Congress recognized that several types of telecommunications-related services, though exempted from the statute, are still required to comply with valid court orders. Such services, as Congress noted, "can be wiretapped pursuant to a court order, and their owners must cooperate when presented with a wiretap order, but these services and systems do not have to be designed so as to comply with the capability requirements."<sup>9</sup> The Commission states as much in paragraph 67 of its *Third Report and Order*: "We recognize, as DOJ/FBI acknowledge, that if the subject arranges for a "Meet Me" conference bridge, the LEA will need a Title III order to cover the communication of the conference bridge," and "under those circumstances" a conference bridge provider would have to provide access to law enforcement.<sup>10</sup> In this portion of the *Third Report and Order*, the Commission properly references the non-CALEA obligations relating to bridge-based conferences -- and did not impose CALEA requirements.

The fact that the Commission could not have intended to extend CALEA coverage to conference bridges services is evidenced further by the lack of an adequate record before the Commission to do so. As indicated earlier, J-STD-025 did not establish technical obligations for conference bridges and, as a result, the proceedings before the Commission focused on switch-based conferencing capabilities. The Commission did not receive any comments from providers of teleconferencing bridges (many of whom, as the Commission may be aware, are not telecommunications carriers) or their manufacturers. Indeed, the only mention of the technology during the comment period was AT&T's footnote -- distinguishing bridge-based conferences from other subscriber-based conferencing products.<sup>11</sup>

Consequently, the Commission received no information about the technical capabilities of conference bridges. Conference bridge equipment is extremely diverse; each provider essentially creates its own proprietary, home grown network -- piecing together equipment from various manufacturers. Generally, these teleconference bridges are simple pieces of equipment, with limited technical capabilities. The vast majority of the equipment was installed in the network in the 1970s and 1980s and very little capability has been added since.

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<sup>9</sup> H. Rep. No. 103-827, at 18 (1994).

<sup>10</sup> Third R&O, ¶ 67.

<sup>11</sup> See *Comments of AT&T Corp.*, CC Doc. No. 97-213, at 8 & n. 19 (filed December 14, 1998).

This history also shows why CALEA should not be read to apply to conference bridges. Such bridges have existed for a quarter century or more. Yet the FBI identified not one real-world wiretap problem created in all that time by the existence of the conference-bridge industry or by the rudimentary nature of its intercept capabilities. In fact, there is no record before the Commission that the FBI or other law enforcement agencies have ever found it necessary to serve a single Title III intercept order on a conference bridge provider. One might speculate that criminals are reluctant to employ conference calls, which are routinely interrupted by conference operators. But whatever the cause, there is no record here that would justify -- let alone require -- a complete reengineering of the conference-bridge industry and its equipment. It would be astonishing for the Commission to have required that the conference bridge industry build new capabilities to carry out wiretaps in the absence of such a record.

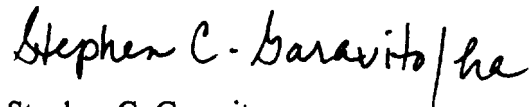
If, nevertheless, the Commission believes that CALEA obligations should be imposed on teleconference bridges, AT&T respectfully suggests that the Commission first seek comments from providers and manufacturers of teleconference bridges. The absence of any record or prior indication that the Commission intended its proceedings to apply to bridge-based conference calls makes it inappropriate for the Commission to impose such obligations without notice and comment. In order to avoid such a legal deficiency, AT&T respectfully suggests that the Commission, if it has any inclination to treat the FBI's position seriously, seek additional comments as part of a Further Notice of Proposed Rulemaking. AT&T, of course, stands ready to meet with the Commission staff and to brief them on the limited technical capabilities of its conference bridge equipment.

AT&T would also encourage the Commission to learn (under confidentiality orders, if necessary) whether providers of teleconferencing bridges have ever been served with an order to monitor a "Meet Me" conference. Although AT&T cannot speak for other providers of conference bridges, as one of the largest providers in the teleconferencing market, it is unaware of any such order.

Mr. Dale Hatfield  
January 10, 2000  
Page 6

AT&T appreciates the Commission's attention to this significant issue. We respectfully request that the Commission clarify that its comments in the *Third Report and Order* were meant to distinguish bridge-based from switch-based conferencing and reject any requests from law enforcement to improperly extend CALEA obligations outside the boundaries of the statute.

Sincerely,

A handwritten signature in black ink that reads "Stephen C. Garavito/he". The signature is written in a cursive, slightly slanted style.

Stephen C. Garavito  
Martha Lewis Marcus

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cc: Tom Sugrue (Wireless Telecommunications Bureau)  
Stacy Jordan (Wireless Telecommunications Bureau)  
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